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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/040,141	01/02/2002	Han Smits	TOK00-006	9376
22855	7590	09/09/2004	EXAMINER	
RANDALL J. KNUTH P.C. 3510-A STELLHORN ROAD FORT WAYNE, IN 46815-4631			FISCHER, ANDREW J	
			ART UNIT	PAPER NUMBER
			3627	

DATE MAILED: 09/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/040,141

Applicant(s)

SMITS, HAN

Examiner

Andrew J. Fischer

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-61 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-61 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>2</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Acknowledgements

1. This Office Action is written in OACS. Because of this, the Examiner is unable to control formatting, paragraph numbering, font, spelling, line spacing, and/or other word processing issues. The Examiner sincerely apologizes for these errors.

Specification

2. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1); MPEP §608.01(o), and MPEP §2181.

Correction of the following is required:

- a. The “means for displaying” as recited in claim 1;
- b. The “means for saving data” as recited in claim 1;
- c. The “means for transferring” as recited in claim 1; and
- d. The “means for selecting” as recited in claim 21.

Claim Rejections - 35 USC §112 2nd Paragraph

3. The following is a quotation of the 2nd paragraph of 35 U.S.C. §112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1-40 are rejected under 35 U.S.C. §112, 2nd paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claims are replete with these errors. Some examples follow:

A. If Applicant desires to invoke 35 U.S.C. §112, 6th paragraph, Applicant has failed to clearly link and associate some corresponding structure to the “means for displaying” as recited in claim 1.

B. If Applicant desires to invoke 35 U.S.C. §112, 6th paragraph, Applicant has failed to clearly link and associate some corresponding structure to the “means for transferring” as recited in claim 1.

C. If Applicant desires to invoke 35 U.S.C. §112, 6th paragraph, Applicant has failed to clearly link and associate some corresponding structure to the “means for selecting” as recited in claim 21.

5. Regarding the potential “means for” phrases, Applicant is reminded, “For claim clauses containing functional limitations in ‘means for’ terms pursuant to §112 ¶ 6, the claimed function and its supporting structure in the specification must be presented with sufficient particularity to satisfy the requirements of §112 ¶ 2.” *S3 Inc. v. nVIDIA Corp.*, 259 F.3d 1364, 1367, 59 USPQ2d 1745, 1747 (Fed. Cir. 2001) (citations omitted). In other words, “[f]ailure to describe adequately the necessary structure, material, or acts corresponding to a means-plus-function limitation in the written description means that the drafter has failed to comply with Section 112, Para. 2.” *Atmel Corp. v. Information Storage Devices, Inc.*, 198 F.3d 1374, 1380 53 USPQ2d 1225, 1229 (Fed. Cir. 1999) citing *In re Dossel*, 115 F.3d 942, 945, 42 USPQ2d 1881, 1884 (Fed. Cir. 1997)).

Claim Rejections - 35 USC §103

6. The following is a quotation of 35 U.S.C. §103(a) which forms the basis for all obviousness rejections set forth in this Office Action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-61, as understood by the Examiner, are rejected under 35 U.S.C. §103(a) as being unpatentable over Eyon et. al. (U.S. 6,714,937 B1)(“Eyon”) in view of Atchley et. al. (U.S. 5,602,745)(“Atchley”). Eyon discloses a detailed system to customize a product. Eyon does not directly disclose customizing fuel dispenser.

Atchley discloses customizing a fuel pump in the design phrase. Therefore it would have been obvious to a person having ordinary skill in the art at the time the invention was made to modify Eyon as taught by Atchley to include customizing a fuel pump. Such a modification would have allowed the supplier to more easily respond to the desired types of fuel pumps required by various fuels in different locations.

8. After careful review of the specification and prosecution history, the Examiner is unaware of any desire—either expressly or implicitly—by Applicant to be his own lexicographer and to define a claim term to have a meaning other than its ordinary and accustomed meaning. Therefore, the Examiner starts with the heavy presumption that all claim limitations are given their ordinary and accustomed meaning. See *Bell Atlantic Network Services Inc. v. Covad Communications Group Inc.*, 262 F.3d 1258, 1268, 59 USPQ2d 1865, 1870 (Fed. Cir. 2001)(“[T]here is a heavy presumption in favor of the ordinary meaning of claim language as understood by one of ordinary skill in the art.”); *CCS Fitness Inc. v. Brunswick Corp.*, 288 F.3d

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1359, 1366, 62 USPQ2d 1658, 1662 (Fed. Cir. 2002) (There is a “heavy presumption that a claim term carries its ordinary and customary meaning.”). See also MPEP 2111.01 and *In re Zletz*, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989).¹

In accordance with the ordinary and accustomed meaning presumption, during examination the claims are interpreted with their “broadest reasonable interpretation” *In re Morris*, 127 F.3d 1048, 1054, 44 USPQ2d 1023, 1027 (Fed. Cir. 1997). See also MPEP §2111.

However, if Applicant disagrees with the Examiner and has either (a) already used lexicography or (b) wishes to use lexicography and therefore (under either (a) or (b)) desires a claim limitation to have a meaning other than its ordinary and accustomed meaning, the Examiner respectfully requests Applicant in his next response to expressly indicate² the claim limitation at issue and to show where in the specification or prosecution history the limitation is defined. Such definitions must be clearly stated in the specification or file history. *Bell Atlantic*, 262 F.3d at 1268, 59 USPQ2d at 1870, (“[I]n redefining the meaning of particular claim terms away from the ordinary meaning, the intrinsic evidence must ‘clearly set forth’ or ‘clearly

¹ It is the Examiner’s position that “plain meaning” and “ordinary and accustomed meaning” are synonymous. See e.g. *Rexnord Corp. v. Laitram Corp.*, 274 F.3d 1336, 1342, 60 USPQ2d 1851, 1854 (Fed. Cir. 2001) (“[A]ll terms in a patent claim are to be given their plain, ordinary and accustomed meaning . . .”).

² “Absent an *express intent* to impart a novel meaning, terms in a claim are to be given their ordinary and accustomed meaning. [Emphasis added.]” *Wenger Manufacturing Inc. v. Coating Mach. Sys., Inc.*, 239 F.3d 1225, 1232, 57 USPQ2d 1679, 1684 (Fed. Cir. 2001) (citations and quotations omitted). “In the absence of an *express intent* to impart a novel meaning to claim terms, an inventor’s claim terms take on their ordinary meaning. We indulge a heavy presumption that a claim term carries its ordinary and customary meaning. [Emphasis added.]” *Teleflex Inc. v. Ficosa North America Corp.*, 299 F.3d 1313, 1325, 63 USPQ2d 1374, 1380 (Fed. Cir. 2002) (citations and quotations omitted).

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redefine' a claim term so as to put one reasonably skilled in the art on notice that the patentee intended to so redefine the claim term").³ The Examiner cautions that no new matter is allowed. Applicant is reminded that failure by Applicant in his next response to properly traverse this issue in accordance with 37 C.F.R. §1.111(b) or to be non-responsive to this issue entirely will be considered a desire by Applicant to forgo lexicography in this application and to continue having the claims interpreted with their broadest reasonable interpretation.⁴ Additionally, it is the Examiner's position that the above requirements are reasonable.⁵ Unless expressly noted otherwise by the Examiner, the preceding discussion on claim interpretation principles applies to all examined claims currently pending.

9. To the extent that the Examiner's interpretations are in dispute with Applicant's interpretations, the Examiner hereby adopts the following definitions—under the broadest

³ See also *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1582, 39 USPQ2d 1573, 1576 (Fed. Cir. 1996), ("[A] patentee may choose to be his own lexicographer and use terms in a manner other than their ordinary meaning, *as long as* the special definition of the term is *clearly stated* in the patent specification or file history. [Emphasis added.]"); *Multiform Desiccants Inc. v. Medzam Ltd.*, 133 F.3d 1473, 1477, 45 USPQ2d 1429, 1432 (Fed. Cir. 1998) ("Such special meaning, however, must be sufficiently clear in the specification that any departure from common usage would be so understood by a person of experience in the field of the invention."). See also MPEP §2111.01, subsection titled "Applicant May Be Own Lexicographer" and MPEP §2173.05(a) titled "New Terminology."

⁴ See 37 C.F.R. §1.104(c)(3) which states in part: "the examiner may rely upon admissions by applicant . . . as to *any matter* affecting patentability [Emphasis added.]"

⁵ The Examiner's requirements on this matter are reasonable on at least two separate and independent grounds. First, the Examiner's requirements are simply an express request for clarification of how Applicant intends his claims to be interpreted so that lexicography (or even an *attempt* at lexicography) by Applicant is not inadvertently overlooked by the Examiner. Second, the requirements are reasonable in view of the USPTO's goals of compact prosecution, productivity with particular emphasis on reductions in both pendency and cycle time, and other goals as outlined in the USPTO's The 21st Century Strategic Plan, February 3, 2003 available at www.uspto.gov/web/offices/com/strat21/index.htm (last accessed September 6, 2004).

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reasonable interpretation standard—in all his claim interpretations.⁶ Moreover, while the following list is provided in accordance with *In re Morris*, the definitions are a guide to claim terminology since claim terms must be interpreted in context of the surrounding claim language.⁷ Finally, the following list is not intended to be exhaustive in any way:

Database “A file composed of records, each containing fields together with a set of operations for searching, sorting, recombining and other functions.” Computer Dictionary, 3rd Edition, Microsoft Press, Redmond, WA, 1997.⁸

Server: “2. On the Internet or other network, a computer or program that responds to commands from a client.” *Id.* **Client**: “3. On a local area network or Internet, a computer that accesses shared network resources provided by another computer (called a server).” *Id.*

Computer: “Any machine that does three things: accepts structured input, processes it according to prescribed rules, and produces the results as output.” *Id.*

⁶ While most definitions are cited because these terms are found in the claims, the Examiner may have provided additional definitions to help interpret words, phrases, or concepts found in the definitions themselves or in the prior art.

⁷ See e.g. *Brookhill-Wilk 1 LLC v. Intuitive Surgical Inc.*, 334 F.3d 1294, 1300, 67 USPQ2d 1132, 1137 (Fed. Cir. 2003) (abstract dictionary definitions are not alone determinative; “resort must always be made to the surrounding text of the claims in question”).

⁸ Based upon Applicant’s disclosure, the art of record, and the knowledge of one of ordinary skill in this art as determined by the factors discussed in MPEP §2141.03 (where practical), the Examiner finds that the *Microsoft Press Computer Dictionary* is an appropriate technical dictionary known to be used by one of ordinary skill in this art. See e.g. *Altiris Inc. v. Symantec Corp.*, 318 F.3d 1363, 1373, 65 USPQ2d 1865, 1872 (Fed. Cir. 2003) where the Federal Circuit used the *Microsoft Press Computer Dictionary* (3d ed.) as “a technical dictionary” to define the term “flag.” See also *In re Barr*, 444 F.2d 588, 170 USPQ 330 (CCPA 1971)(noting that its appropriate to use technical dictionaries in order to ascertain the meaning of a term of art) and MPEP §2173.05(a) titled ‘New Terminology.’

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10. Additionally, the Examiner notes that “the PTO and the CCPA acknowledged product-by-process claims as an exception to the general rule requiring claims to define products in terms of structural characteristics.” *Atlantic Thermoplastics Co. v. Faytex Corp.*, 970 F.2d 834, 845, 23 USPQ2d 1481, 1490 (Fed. Cir. 1992) (hereinafter “*Atlantic Thermoplastics v. Faytex I*”). Furthermore, the Federal Circuit “acknowledges that it has in effect recognized . . . product-by-process claims as exceptional.” *Atlantic Thermoplastics v. Faytex I*, 970 F.2d at 847, 23 USPQ2d at 1491.

Because of this exceptional status, the Examiner has carefully reviewed the claims and it is the Examiner’s position that claims 1-61 *do not* contain any product-by-process limitations whether in a conventional format or otherwise. If Applicant disagrees with the Examiner, the Examiner respectfully requests Applicant in his next response to expressly point out any product-by-process claim(s) and their limitations so that they may be afforded their exceptional status and treated accordingly. Applicant is reminded that “even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself.” *In re Thorpe*, 777 F.2d 695, 697, 227 USPQ 964, 966 (Fed. Cir. 1985) (citations omitted).⁹ Failure by Applicant in his next response to also address this issue in accordance with 37 C.F.R. §1.111(b) or to be non-responsive to this issue entirely will be considered intent by Applicant *not* to recite any product-by-process limitations. Unless expressly noted otherwise by the Examiner, the preceding discussion on product-by-process principles applies to all examined claims currently pending.

⁹ See also MPEP §2113.

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11. Although Applicants use “means for” in the claims (*e.g.* claim 1 recites “means for displaying”), it is the Examiner’s position that the “means for” phrases do not invoke 35 U.S.C. 112 6th paragraph. If Applicant concurs, the Examiner respectfully requests Applicant to either amend the claims to remove all instances of “means for” from the claims, or to explicitly state on the record why 35 U.S.C. 112 6th paragraph should not be invoked. Alternatively, if Applicant desires to invoke 35 U.S.C. 112 6th paragraph, the Examiner respectfully requests Applicants to expressly state their desire on the record. Upon receiving such express invocation of 35 U.S.C. 112 6th paragraph, the “means for” phrases will be interpreted as set forth in the *Supplemental Examination Guidelines for Determining the Applicability of 35 USC 112 6th*.¹⁰ Failure by Applicant in his next response to also address the 35 U.S.C. 112 6th paragraph issues in accordance with 37 C.F.R. §1.111(b) or to be non-responsive to this issue entirely will be considered a desire by Applicant NOT to invoke 35 U.S.C. 112 6th paragraph. Unless expressly noted otherwise by the Examiner, the preceding discussion on 35 U.S.C. 112 6th paragraph applies to all examined claims currently pending.

Conclusion

12. References considered pertinent to Applicant’s disclosure are listed on the attached form PTO-892.

13. The following two (2) citations to the Manual of Patent Examining Procedure (“MPEP”) apply to this Office Action: MPEP citations to Chapters 100, 200, 500, 600, 700, 1000, 1100, 1300, 1400, 1500, 1700, 1800, 2000, 2100, 2200, 2500, 2600, and 2700 are from the MPEP 8th

¹⁰ Federal Register Vol. 65, No. 120, June 21, 2000.

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Edition, Rev. 2, May 2004. All remaining MPEP citations are from MPEP 8th Edition, August 2001.

14. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

15. In accordance with *In re Lee*, 277 F.3d 1338, 1344-45, 61 USPQ2d 1430, 1434-35 (Fed. Cir. 2002), the Examiner finds that the references How Computers Work Millennium Ed. by Ron White; How Networks Work, Millennium Ed. by Frank J. Derfler et. al.; and How the Internet Works, Millennium Ed. by Preston Gralla are additional evidence of what is basic knowledge or common sense to one of ordinary skill in this art. Each reference is cited in its entirety. Moreover, because these three references are directed towards beginners (see *e.g.* “User Level Beginning . . .”), because of the references’ basic content (which is self-evident upon review of the references), and after further review of the entire application and all the art now of record in conjunction with the factors as discussed in MPEP §2141.03 (where practical), the Examiner finds that these three references are primarily directed towards those of low skill in this art. Because these three references are directed towards those of low skill in this art, the Examiner finds that one of ordinary skill in this art must—at the very least—be aware of and understand the knowledge and information contained within these three references.

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16. In accordance with the USPTO's goals of customer service, compact prosecution, and reduction of cycle time, the Examiner has made every effort to clarify his position regarding claim interpretation and any rejections or objections in this application. Furthermore, the Examiner has provided Applicant with notice—for due process purposes—of his position regarding his factual determinations and legal conclusions. If Applicant disagrees with any factual determination or legal conclusion made by the Examiner in this Office Action whether expressly stated or implied,¹¹ the Examiner respectfully reminds Applicant to properly traverse the Examiner's position(s) in accordance with 37 C.F.R. §1.111(b) in his next response. By addressing these issues now, matters where the Examiner and Applicant agree can be eliminated allowing the Examiner and Applicant to focus on areas of disagreement (if any) with the goal towards allowance in the shortest possible time. If Applicant has any questions regarding the Examiner's positions or has other questions regarding this communication or even previous communications, Applicant is strongly encouraged to contact Examiner Andrew J. Fischer whose telephone number is (703) 305-0292. If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's immediate supervisor, Robert Olszewski, can be reached at (703) 308-5183. To respond to this Office Action by facsimile, fax to (703) 872-9306.



Andrew J. Fischer
Primary Examiner
Art Unit 3627

AJF
September 6, 2004

¹¹ *E.g.*, if the Examiner rejected a claim under §103 with two references, although not directly stated, it is the Examiner's implied position that the references are analogous art.